

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Frank Bartell, Stan Gilbert and Arlene Caney

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

Philadelphia

(c) Attorneys (Firm Name, Address and Telephone Number)

Robert C. Drake, Benjamin Speciale
Drake Speciale LLC, 221 Chestnut St, 2nd Fl
Phila PA 19106 (215) 732-7017

DEFENDANTS

Community College of Philadelphia
Donald Guy General and Docs 1-10

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

Philadelphia

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

☐ 1 PTF ☐ 1 DEF

Incorporated or Principal Place of Business in This State

☐ 4 PTF ☐ 4 DEF

Citizen of Another State

☐ 2 PTF ☐ 2 DEF

Incorporated and Principal Place of Business in Another State

☐ 5 PTF ☐ 5 DEF

Citizen or Subject of a Foreign Country

☐ 3 PTF ☐ 3 DEF

Foreign Nation

☐ 6 PTF ☐ 6 DEF

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for Nature of Suit Code Descriptions

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS- Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL/PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from Another District (specify)☐ 6 Multidistrict Litigation - Transfer☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity)

Brief description of cause

Age discrimination in employment.

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

more than \$500,000

CHECK YES only if demanded in complaint

JURY DEMAND:

☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

DOCKET NUMBER

DEC 20 2019

DATE
12/20/2019

SIGNATURE OF ATTORNEY OF RECORD

Robert C. Drake

FOR OFFICE USE ONLY

RECEIPT #

AMOL/NT

APPI Y:NG IFP

JUDGE

MAG JUDGE

DESIGNATION FORM

(To be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)

Address of Plaintiff: 40 Drake Special LLC, 221 Chestnut St. Phila, Pa. 19106

Address of Defendant: 1700 Spring Garden Street, Phila, Pa. 19130

Place of Accident, Incident or Transaction: 1700 Spring Garden Street, Phila, Pa. 19130

RELATED CASE, IF ANY:

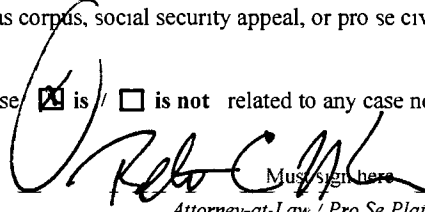
Case Number: _____ Judge: _____ Date Terminated: _____

Civil cases are deemed related when Yes is answered to any of the following questions

- | | | | |
|---|---|---|--|
| 1 | Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 2 | Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> |
| 3 | Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |
| 4 | Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☒ is / ☐ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE 12/20/2019


 Must sign here
 Attorney-at-Law / Pro Se Plaintiff
57177 - Pa.
Attorney I D # (if applicable)

CIVIL: (Place a v in one category only)

A. Federal Question Cases:

- | | |
|-------------------------------------|---|
| <input type="checkbox"/> | 1. Indemnity Contract, Marine Contract, and All Other Contracts |
| <input type="checkbox"/> | 2. FELA |
| <input type="checkbox"/> | 3. Jones Act-Personal Injury |
| <input type="checkbox"/> | 4. Antitrust |
| <input type="checkbox"/> | 5. Patent |
| <input type="checkbox"/> | 6. Labor-Management Relations |
| <input type="checkbox"/> | 7. Civil Rights |
| <input type="checkbox"/> | 8. Habeas Corpus |
| <input type="checkbox"/> | 9. Securities Act(s) Cases |
| <input type="checkbox"/> | 10. Social Security Review Cases |
| <input checked="" type="checkbox"/> | 11. All other Federal Question Cases
(Please specify) Age Discrimination in Employment |

B. Diversity Jurisdiction Cases:

- | | |
|--------------------------|--|
| <input type="checkbox"/> | 1. Insurance Contract and Other Contracts |
| <input type="checkbox"/> | 2. Airplane Personal Injury |
| <input type="checkbox"/> | 3. Assault, Defamation |
| <input type="checkbox"/> | 4. Marine Personal Injury |
| <input type="checkbox"/> | 5. Motor Vehicle Personal Injury |
| <input type="checkbox"/> | 6. Other Personal Injury (Please specify) _____ |
| <input type="checkbox"/> | 7. Products Liability |
| <input type="checkbox"/> | 8. Products Liability - Asbestos |
| <input type="checkbox"/> | 9. All other Diversity Cases
(Please specify) _____ |

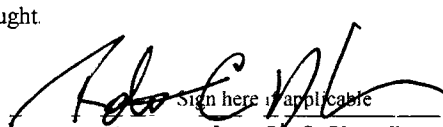
ARBITRATION CERTIFICATION

(The effect of this certification is to remove the case from eligibility for arbitration)

I, Robert C Drake, counsel of record or pro se plaintiff, do hereby certify

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs☒ Relief other than monetary damages is sought.

DATE 12/20/2019


 Sign here if applicable
 Attorney-at-Law / Pro Se Plaintiff
DEC 20 2019
57177 - Pa.
Attorney I D # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

Frank Bartell
Stan Gilbert
Arlene Caney

Community
College of Phila.
v. Dr. Donald Guy
Generals
Docs 1-10

CIVIL ACTION

19 NO. **6050**

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ()
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. (X)

12/20/2019 Robert C Drake Plaintiff
Date Attorney-at-law Attorney for

215-732-7017 215-600-3534 robert@drakespecial.com
Telephone FAX Number E-Mail Address

DEC 20 2019

MSG

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FRANK BARTELL,
STAN GILBERT, and
ARLENE J. CANEY,

Plaintiffs,

v.

COMMUNITY COLLEGE OF
PHILADELPHIA
1700 Spring Garden Street
Philadelphia, PA 19130,

DR. DONALD GUY GENERALS,
PRESIDENT OF COMMUNITY
COLLEGE OF PHILADELPHIA

and,

JOHN AND JANE DOES 1 THROUGH
10 all whose true names are unknown,

Defendants.

Civil Action No.

COMPLAINT

19 6056

JURY TRIAL DEMANDED

COMPLAINT

I. PRELIMINARY STATEMENT

1. Plaintiffs, Frank Bartell, Stan Gilbert and Arlene J. Caney (hereinafter "Plaintiffs") bring this action under the Age Discrimination in Employment Act (ADEA), 29 U.S.C. §621 *et seq.*, the Older Workers Benefit Protection Act (OWBPA), 29 U.S.C. §626 *et seq.*, the Pennsylvania Human Relations Act (PHRA), 43 P.S. §954 *et seq.*, and the Americans

with Disabilities Act (ADA), 42 U.S.C. §12101, *et seq.* against Defendants Community College of Philadelphia, Donald Generals, and John and Jane Does 1 through 10 (hereinafter “Defendants”) for eliminating Plaintiffs’ positions, doubling Plaintiffs’ workload and/or forcing retirement, and failing to provide and/or eliminating accommodation for a disability. Plaintiffs seek reinstatement, equitable relief, compensatory damages, costs and attorney fees from Defendants.

II. THE PARTIES

2. Plaintiff, Frank Bartell, is an adult individual and citizen of the Commonwealth of Pennsylvania, residing in Philadelphia County.

3. Plaintiff, Stan Gilbert, is an adult individual and citizen of the Commonwealth of Pennsylvania, residing in Montgomery County.

4. Plaintiff, Arlene J. Caney, is an adult individual and citizen of the Commonwealth of Pennsylvania, residing in Philadelphia County.

5. Plaintiffs are older than 40 years of age.

6. Upon information and belief, Defendant Community College of Philadelphia, is a Pennsylvania non-profit academic and research institution organized under the laws of the Commonwealth of Pennsylvania that directed, managed, controlled and employed, at all relevant times, Plaintiffs.

7. Upon information and belief, Defendant Dr. Donald Guy Generals is an adult individual and citizen of the Commonwealth of Pennsylvania.

8. Defendant Dr. Generals is President of Defendant Community College of Philadelphia.

9. Upon information and belief, Defendants John and Jane Does 1 through 10 are individuals whose names and addresses of residence are unknown.

10. At all times material hereto, the conduct of Defendants as enumerated within this Complaint occurred within the County of Philadelphia and within the Eastern District of Pennsylvania.

III. JURISDICTION AND VENUE

11. Jurisdiction over this action is conferred on this Court by 28 U.S.C. §1331 and §1343.

12. Venue is proper in the Eastern District of Pennsylvania pursuant to 28 U.S.C. §1391.

13. At all times material hereto, the Community College of Philadelphia employed more than fifty (50) employees.

14. At all times material hereto, the Community College of Philadelphia was an “employer” as defined by the ADEA, 28 U.S.C. §630.

15. At all times material hereto, the Community College of Philadelphia was an “employer” as defined by the ADA, 42 U.S.C. §12101, *et seq.*

16. At all times material hereto, the Community College of Philadelphia was an “employer” as defined by §§4 and 5 of the Pennsylvania Human Relations Act, 43 P.S. §954 *et seq.*

17. At all times material hereto, Plaintiffs were employed by the Community College of Philadelphia and assigned to work at the Community College of Philadelphia located within the Eastern District of Pennsylvania.

18. Plaintiffs have complied with all administrative and jurisdictional prerequisites and were all issued a Notice of Right to Sue by the Equal Employment Opportunity Commission dated September 23, 2019, thereby exhausting administrative remedies for all claims in this Complaint.

IV. FACTUAL BACKGROUND

19. Plaintiff Bartell has been employed by Defendant Community College of Philadelphia as a member of its faculty since the 1970s.

20. Plaintiff Gilbert has been employed by Defendant Community College of Philadelphia as a member of its faculty since 1977.

21. Plaintiff Caney has been employed by Defendant Community College of Philadelphia as a member of its faculty since 1976.

The Pre-Retirement Workload Options

22. Plaintiffs' terms and conditions of employment provided a benefit known as the Pre-Retirement Workload Options, which allowed full-time faculty members older than 55 years of age who met certain requirements to elect to take one of two positions that reduced workload, but still provided full-time benefits.

23. Under the first Pre-Retirement Workload Option (the "Indefinite Pre-Retirement Position"), qualifying full-time faculty members could elect to take a position that reduced workload and salary by half, but still provided full-time benefits.

24. Full-time benefits include, among other benefits, health insurance coverage for family members, which is a benefit that is not available upon retirement.

25. Once the Indefinite Pre-Retirement Position was selected, a faculty member was permitted to work a reduced schedule with full benefits indefinitely.

26. Under the second Pre-Retirement Workload Option (the “Step-Down Position”), qualifying full-time faculty members could elect to take a three-year position that reduced workload by 25% per year, until retirement in year four, but still provided full-time benefits for those three years and full-time salary for two years.

Age Discrimination

27. In 2016, Plaintiff Bartell chose the Indefinite Pre-Retirement Position, entitling Plaintiff to a reduced workload by half and full-time benefits indefinitely, including health insurance coverage for family members among other benefits.

28. In 2016, Plaintiff Gilbert chose the Indefinite Pre-Retirement Position, entitling Plaintiff to a reduced workload by half and full-time benefits indefinitely, including health insurance coverage for family members among other benefits.

29. In 2018, Plaintiff Caney chose the Indefinite Pre-Retirement Position, entitling Plaintiff to a reduced workload by half and full-time benefits indefinitely, including health insurance coverage for family members among other benefits.

30. In April 2019, Defendants sent a letter notifying each Plaintiff that the Indefinite Pre-Retirement Position would be eliminated and demanding that Plaintiff either retire or take a new position with double the workload.

31. In effect, the letter invited each Plaintiff to select which adverse action the employer should take -- forced retirement or increased workload.

32. Defendants presented Plaintiffs with a Faculty Workload Selection Sheet and required Plaintiffs to make a signed election.

33. Plaintiffs elected the option of forced, or constructively forced, retirement after three years of what had been the Indefinite Pre-Retirement Position.

34. Plaintiff Bartell selected forced retirement, which assigned retirement on or before August 31, 2020.

35. Plaintiff Gilbert selected forced retirement, which assigned retirement on or before August 31, 2020.

36. Plaintiff Caney selected forced retirement, which assigned retirement on or before August 31, 2021.

37. No one under the age of 40 was forced to retire.

38. No one under the age of 40 had their workload increased.

39. Defendants intentionally eliminated the positions that had been awarded to employees through the Pre-Retirement Workload Options.

40. Defendants eliminated the Indefinite Pre-Retirement Position and Step-Down Position to intentionally remove older employees. Defendants' policy is based on negative stereotypes and assumptions about older workers.

41. Defendants' elimination of the Indefinite Pre-Retirement Position and the Step-Down Position had the effect of forcing out older employees who were not willing or able to double their workload, such as Plaintiffs, who were constructively forced to retire.

42. Defendants' elimination of the Indefinite Pre-Retirement Position and Step-Down Position had the effect of doubling the workload of older employees.

43. Defendants intentionally endeavored to eliminate positions that allowed for a reduced workload.

44. Upon information and belief, Defendants believed that the makeup of the faculty was too old and intentionally endeavored to have a younger faculty. The allegations of this

paragraph will likely have evidentiary support after a reasonable opportunity for further investigation and/or discovery.

45. Defendants willfully violated the Age Discrimination in Employment of 1967, as amended.

46. Defendants' act of eliminating the Indefinite Pre-Retirement Position and Step-Down Position had a disparate impact on older employees.

47. As a proximate result of Defendants' age discrimination, Plaintiffs were deprived of the opportunity to earn wages and deprived of the opportunity to earn employment benefits.

Disability Discrimination Suffered By Plaintiff Bartell

48. Plaintiff Bartell suffers from chronic knee pain and uses a cane to walk at all times.

49. Plaintiff Bartell's condition substantially restricts major life activities like walking, standing, and sitting for long periods of time.

50. Plaintiff's condition is visible and known to Defendant Community College of Philadelphia.

51. By selecting the Indefinite Pre-Retirement Workload, the reduced workload was a sufficient accommodation for Plaintiff's condition that allowed him to continue to work despite his disability.

52. Elimination of the Indefinite Pre-Retirement Workload deprives Plaintiff of his accommodation and Defendants never provided a further accommodation.

COUNT I

**Unlawful Intentional Age Discrimination (Disparate Treatment) in Violation of the ADEA,
29 U.S.C §621 *et seq.*, Against Defendant Community College of Philadelphia**

53. Plaintiffs hereby incorporate by reference all of the aforementioned paragraphs as if fully set forth at length herein.

54. The ADEA makes it unlawful for an employer to take an adverse action against an individual because of such individual's age.

55. Plaintiffs were older than 40 at the time the Indefinite Pre-Retirement Position was eliminated.

56. Plaintiffs' positions were eliminated by Defendant Community College of Philadelphia because of age because the parameters of the position to be eliminated were defined by age, that is – eliminating a position that could only be held by those 55 and older.

57. Defendants' violations of the ADEA were intentional and willful.

58. As a direct and proximate result of the foregoing violations of the ADEA, Plaintiffs have sustained economic and non-economic damages, including but not limited to, denial of wages and other benefits.

WHEREFORE, Plaintiffs seek a determination that Defendant Community College of Philadelphia violated the Age Discrimination in Employment Act, 29 U.S.C §621 *et seq.*, and request all damages and relief permitted under the Age Discrimination in Employment Act, 29 U.S.C §621 *et seq.*, including but not limited to: back pay and front pay; equitable relief; injunctive relief including but not limited to reinstatement and barring future discriminatory conduct; attorneys' fees, expert fees, costs and expenses; and such other additional relief as this Court deems just and fair.

COUNT II

**Unlawful Use of a Policy Having Disparate Impact on Employees Over 40
Years of Age in Violation of the ADEA, 29 U.S.C §621 *et seq.*
Against Defendant Community College of Philadelphia**

59. Plaintiffs hereby incorporate by reference all of the aforementioned paragraphs as if fully set forth at length herein.

60. The ADEA prohibits employers from using facially age-neutral policies that have a significant disparate impact on workers over the age of 40, such as Plaintiffs.

61. Eliminating the Indefinite Pre-Retirement Position and the Step-Down Position had a significant adverse disparate impact on Plaintiffs and other employees over the age of 40 in violation of the ADEA.

62. Of those adversely affected by the policy, 100% were over the age of 40.

63. No one under the age of 40 was adversely affected by the policy by being forced to retire or increase his or her workload.

64. Upon information and belief, 28 employees were adversely affected by the elimination of the Indefinite Pre-Retirement Position and the Step-Down Position.

65. Upon information and belief, approximately 15% the age range disparately impacted by this policy (55 years and older) suffered an adverse employment action of either forced retirement or increased workload.

66. Defendants' stated reasons other than age for the policy eliminating the Indefinite Pre-Retirement Position and the Step-Down Position by forcing retirement or increasing workload (that the Pre-Retirement Option was costly and inconsistent with the College's "full-time faculty" philosophy) were pretextual and patently false.

67. The Indefinite Pre-Retirement Position was less costly because those in the Indefinite Pre-Retirement Position received half the salary of their counterparts who had a full workload.

68. Even if the Indefinite Pre-Retirement Option was costly, which it is not, Defendants' stated reason would only speak to removing the option – not the elimination of the positions of those who had selected the option in the past, whose positions rightfully should have been grandfathered.

69. Furthermore, targeting faculty positions with reduced workloads for removal is a pretext and a proxy for the oldest faculty members who are among the only employees who have qualified for a reduced load precisely because of their age.

70. As a direct and proximate result of the foregoing violations of the ADEA, Plaintiffs have sustained economic and non-economic damages, including but not limited to, denial of wages and other benefits.

WHEREFORE, Plaintiffs seek a determination that Defendant Community College of Philadelphia violated the Age Discrimination in Employment Act, 29 U.S.C § 621 *et seq.*, and request all damages and relief permitted under the Age Discrimination in Employment Act, 29 U.S.C § 621 *et seq.*, including but not limited to: back pay and front pay; equitable relief; injunctive relief including but not limited to reinstatement and barring future discriminatory conduct; attorneys' fees, expert fees, costs and expenses; and such other additional relief as this Court deems just and fair.

COUNT III

**Declaratory Relief for Violation of the OWBPA, 29 U.S.C. § 626 *et seq.*
Against Defendant Community College of Philadelphia**

71. Plaintiffs hereby incorporate by reference all of the aforementioned paragraphs as if fully set forth at length herein.

72. Upon information and belief, Defendant Community College of Philadelphia believes that elimination of Plaintiffs' positions did not violate the ADEA, in part, because the elimination of the position and the acceptance of another position has been agreed to. In other words, the Defendant believes that claims stemming from the elimination of the position were waived by agreement.

73. In eliminating the Indefinite Pre-Retirement Position and the Step-Down Position, Defendant did not procure a valid waiver of any employment claims.

74. Collective Bargaining and any agreement with the Faculty & Staff Federation of the Community College of Philadelphia, Local 2026, AFT, FLO-CIO ("the Federation") cannot serve as a waiver of ADEA claims because any such agreement failed to comply with the OWBPA.

75. Similarly, the signed Faculty Workload Selection Sheet cannot serve as a waiver of ADEA claims because any such agreement failed to comply with the OWBPA.

76. Agreements with the Federation and the signed Faculty Workload Section Sheet violated the OWBPA because they (a) did not give Plaintiffs enough time to consider available options (b) did not give Plaintiffs seven days after signing to make a change, (c) gave no instruction to consult an attorney before signing, and (d) made no specific reference to claims under the ADEA.

77. An OWBPA violation under these circumstances may give rise to a right of action for declaratory or injunctive relief designed to invalidate an ADEA waiver to effectuate the enforcement provisions of both the ADEA and the OWBPA.

WHEREFORE, Plaintiffs seek a determination that Defendant Community College of Philadelphia violated the Older Workers Benefits Protection Act, 29 U.S.C § 623 *et seq.*, and declaratory or equitable relief to, invalidate any purported waiver of claims under the ADEA, nullify the forced retirement date, and enjoin the enforcement of such retirement date; and such other additional relief as this Court deems just and fair.

**COUNT IV -
Violation of the Pennsylvania Humana Relations Act, 43 P.S. §954, *et seq.*
Against All Defendants**

78. Plaintiffs hereby incorporate by reference all of the foregoing paragraphs as if fully set forth at length herein.

79. The PHRA makes it unlawful for an employer to take an adverse action against an individual because of such individual's age.

80. Plaintiffs' positions were eliminated by Defendant Community College of Philadelphia because of age because the parameters of the position to be eliminated were defined by age – eliminating a position that could only be held by those 55 and older.

81. Defendant College's violations of the PHRA were intentional and willful.

82. At all times materiel hereto, Defendant Dr. Generals aided and abetted Defendant Community College of Philadelphia's discrimination against Plaintiffs and used his authority and/or apparent authority as a supervisory employer to aid and abet Defendant Community College of Philadelphia in taking adverse employment action against Plaintiffs because of Plaintiffs' age and disability.

83. At all times material hereto, Defendants John and Jane Does 1 through 10 aided and abetted Defendant Community College of Philadelphia's discrimination against Plaintiffs and used their authority and/or apparent authority as a supervisory employer to aid and abet Defendant Community College of Philadelphia in taking adverse employment action against Plaintiffs because of Plaintiffs' age and disability.

84. Furthermore, eliminating the Indefinite Pre-Retirement Position and the Step-Down Position had a significant adverse disparate impact on Plaintiffs and other employees over the age of 40 in violation of the PHRA.

85. As a direct and proximate result of the foregoing violations of the PHRA, Plaintiffs have sustained economic and non-economic damages, including but not limited to, denial of wages and other benefits.

WHEREFORE, Plaintiffs seek a determination that Defendants violated the Pennsylvania Human Relations Act, 43 P.S. §954, *et seq.*, and request all damages and relief permitted under the Pennsylvania Human Relations Act, 43 P.S. §954, *et seq.*, including but not limited to: back pay and front pay; equitable relief; injunctive relief including but not limited to reinstatement and barring future discriminatory conduct; attorneys' fees, expert fees, costs and expenses; and such other additional relief as this Court deems just and fair.

COUNT V
Violation of the ADA, 42 U.S.C. §12101, *et seq.*
Plaintiff Bartell v. Defendant Community College of Philadelphia

86. Plaintiff hereby incorporates by reference all of the foregoing paragraphs as if fully set forth at length herein.

87. Plaintiff was a member of the class of persons with eligible disabilities entitled to protection from unlawful discriminatory acts, hostile work environment, harassment, retaliation,

and termination pursuant to the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*, because of Plaintiff's serious medical condition and/or disability as set forth above.

88. At all times material hereto, Defendant was aware of Plaintiff's Bartell medical condition and/or disability.

89. At all times material hereto, Plaintiff was qualified for his job with Defendants and was fully capable of performing all of the essential functions of his position with or without reasonable accommodations.

90. At all times material hereto, Plaintiff was performing his job satisfactorily with or without accommodation.

91. Defendant discriminated against Plaintiff because of his medical conditions and/or disability by subjecting Plaintiff to forced retirement, constructively terminating him because he is unable to increase his workload.

92. Defendant discriminated against Plaintiff because of his medical conditions and/or disability by refusing to consider and/or provide Plaintiff with a reduced workload as a reasonable accommodation.

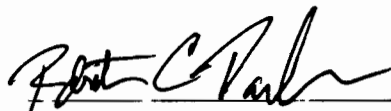
WHEREFORE, Plaintiff Bartell seeks a determination that Defendant Community College of Philadelphia violated the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.* and requests all damages and relief permitted under the ADA, including but not limited to: back pay and front pay; equitable relief; injunctive relief including but not limited to reinstatement and barring future discriminatory conduct; attorneys' fees, expert fees, costs and expenses; and such other additional relief as this Court deems just and fair.

JURY DEMAND

Plaintiffs demand a jury to hear and decide all issues of fact in accordance with Federal Rule of Civil Procedure 38(b).

Dated: December 20, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert C. Drake", written over a horizontal line.

Robert C. Drake, Esquire
Benjamin Speciale, Esquire

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